

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0451P**

**Sales & Use Tax**

**Calendar Years 1994, 1995, 1996, & 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on a sales tax assessment resulting from an audit conducted for the years 1994, 1995, 1996, & 1997.

The taxpayer's principal business is to rent motor vehicles to the general public which includes corporate customers. The taxpayer has several locations in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the penalty should be waived as the taxpayer has timely filed tax returns and no gross negligence has occurred. Furthermore, the error in the prior audit involving personal accident insurance was corrected as soon as possible.

The Department agrees the taxpayer corrected the sales tax error involving personal accident insurance as soon as possible. However, the taxpayer does not have a self-assessing use tax system and the use tax error in the current audit is material.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer is inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.